ORDINANCE NO. 2021-03

AN **URGENCY** ORDINANCE OF THE CITY OF AVENAL ENACTING REGULATIONS FOR HANDLING OF ORGANIC WASTE AND EDIBLE FOODS.

THE CITY COUNCIL OF THE CITY OF AVENAL DOES ORDAIN AS FOLLOWS:

Section 1. PURPOSE. California Senate Bill 1383 ("**SB-1383**"), the Short-lived Climate Pollutant Reduction Act of 2016, requires local jurisdictions to enact and enforce an ordinance or enforceable mechanism to implement relevant regulatory provisions of SB-1383 and its implementing regulations. This ordinance is intended to help reduce food insecurity by requiring Commercial Edible Food Generators (defined below) to undertake arrangements which will maximize the recovery, for human consumption, of Edible Food (defined below) which would otherwise dispose of.

Section 2. FINDINGS. The City Council of the City of Avenal ("**City**") hereby finds and declares the following:

(a) California Constitution Article 11, Section 7 authorizes the City of Avenal ("**City**") to make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

(b) It is in the best interest of the City to enact local regulations which will achieve compliance with State mandates aimed at to help reduce food insecurity.

Section 3. ADOPTION. The following provisions and requirements are enacted and applicable within the City of Avenal as the Mandatory Organic Waste Disposal Reduction Ordinance:

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3.10 TITLE OF ORDINANCE

This ordinance shall be known and may be referred to as the "Mandatory Organic Waste Disposal Reduction Ordinance".

3.20 PURPOSE AND FINDINGS

(a) California Senate Bill 1383 ("**SB-1383**"), the Short-lived Climate Pollutant Reduction Act of 2016, requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The regulations place requirements on multiple entities including cities, residential households, commercial businesses and business owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Organizations and Food Recovery Services to support achievement of Statewide Organic Waste disposal reduction targets.

(b) SB-1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires local jurisdictions to enact and enforce an ordinance or enforceable mechanism to implement relevant regulatory provisions of SB-1383 and its implementing regulations. This ordinance will also help reduce food insecurity by requiring Commercial Edible Food Generators to arrange to have the maximum amount of their Edible Food, which would otherwise be disposed, be recovered for human consumption.

3.30 DEFINITIONS

The following definitions apply within the Mandatory Organic Waste Disposal Reduction Ordinance:

(a) "**Blue Container**" has the same meaning as in 14 CCR § 18982.2(a)(5) and shall be used for the purpose of storage and collection of Source Separated Recyclable Materials.

(b) "**CalRecycle**" means California's Department of Resources Recycling and Recovery.

(c) "**California Code of Regulations**" and "**CCR**" means the State of California Code of Regulations. CCR references in this ordinance are preceded with a number that refers to the relevant Title of the CCR (e.g., "**14 CCR**" refers to Title 14 of CCR).

(d) "**Commercial Business**" and "**Commercial**" means a firm, partnership, proprietorship, joint-stock company, corporation or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multifamily residential dwelling, or as otherwise defined in 14 CCR § 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of implementing this ordinance.

(e) "**Commercial Edible Food Generator**" includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in Sections 3.30(rrr) and 3.30(sss) of this ordinance or as otherwise defined in 14 CCR § 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR § 18982(a)(7).

(f) "**City**" and "**Jurisdiction**" refers to the City of Avenal.

(g) [Reserved.]

(h) [Reserved.]

(i) [Reserved.]

(j) "**Container Contamination**" or "**Contaminated Container**" means a container, regardless of color, that contains Prohibited Container Contaminants.

(k) "**C&D**" means construction and demolition debris.

(*l*) [Reserved.]

(m) "**Designee**" means an entity which the City contracts with or otherwise expressly arranges to carry out any of the City's responsibilities of this ordinance as authorized in 14 CCR § 18981.2. A Designee may be a government entity, a hauler, a private entity or a combination of those entities.

(n) "**Edible Food**" means food intended for human consumption, or as otherwise defined in 14 CCR § 18982(a)(18). For the purposes of this ordinance or as otherwise defined in 14 CCR § 18982(a)(18), "Edible Food" is not Solid Waste if it is recovered and not discarded. Nothing in this ordinance or in 14 CCR, Division 7, Chapter 12 requires or authorizes the Recovery of Edible Food which does not meet the food safety

requirements of the California Retail Food Code.

(o) "**Enforcement Action**" means an action of the City to address non-compliance with this ordinance including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

(p) "**Excluded Waste**" means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the City and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State or federal law, regulation, or ordinance, including: land use restrictions or conditions, waste which cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste which in the City's, or its Designee's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose the City, or its Designee, to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with sections 41500 and 41802 of the California Public Resources Code.

(q) "**Food Distributor**" means a company which distributes food to entities including, but not limited to, Supermarkets and Grocery Stores, or as otherwise defined in 14 CCR § 18982(a)(22).

(r) "**Food Facility**" has the same meaning as in Section 113789 of the Health and Safety Code.

(s) "**Food Recovery**" means actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR § 18982(a)(24).

(t) "**Food Recovery Organization**" means an entity that engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities or as otherwise defined in 14 CCR § 18982(a)(25), including, but not limited to:

(1) A food bank as defined in Section 113783 of the Health and Safety Code;

(2) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,

(3) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

A Food Recovery Organization is not a Commercial Edible Food Generator for the purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR § 18982(a)(7).

If the definition in 14 CCR § 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR § 18982(a)(25) shall apply for purposes of this ordinance.

(u) "**Food Recovery Service**" means a person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery, or as otherwise defined in 14 CCR § 18982(a)(26). A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR § 18982(a)(7).

(v) "**Food Scraps**" means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

(w) "**Food Service Provider**" means an entity primarily engaged in providing food services to institutional, governmental, Commercial, or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR § 18982(a)(27).

(x) "**Food-Soiled Paper**" is compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, and pizza boxes.

(y) "**Food Waste**" means Food Scraps and Food-Soiled Paper.

(z) "**Gray Container**" has the same meaning as in 14 CCR § 18982.2(a)(28) and shall be used for the purpose of storage and collection of Gray Container Waste.

(aa) "**Gray Container Waste**" means Solid Waste which is collected in

a Gray Container which is not acceptable for placement in a Blue or Green Container as part of a three-container collection service.

(bb) "**Green Container**" has the same meaning as in 14 CCR § 18982.2(a)(29) and shall be used for the purpose of storage and collection of Source Separated Green Container Organic Waste.

(cc) "**Grocery Store**" means a store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area which is not separately owned within the store where the food is prepared and served, including a bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR § 18982(a)(30).

(dd) "**Green waste**" means leaves, grass clippings, brush, branches and other forms of organic matter generated from landscapes and gardens, separated from other forms of solid waste.

(ee) [Reserved.]

(ff) "**Inspection**" means a site visit the City reviews records, containers, and an entity's collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in this ordinance, or as otherwise defined in 14 CCR § 18982(a)(35).

(gg) [Reserved.]

(hh) [Reserved.]

(ii) "**Large Event**" means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location which includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR § 18982(a)(38) differs from this definition, the definition in 14 CCR § 18982(a)(38) shall apply to this ordinance.

(jj) "**Large Venue**" means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For

purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control which includes more than one Large Venue which is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR § 18982(a)(39) differs from this definition, the definition in 14 CCR § 18982(a)(39) shall apply to this ordinance.

(kk) "**Local Education Agency**" means a school district, charter school, or county office of education which is not subject to the control of city or county regulations related to Solid Waste, or as otherwise defined in 14 CCR § 18982(a)(40).

(mm) "**Multi-Family Residential Dwelling**" or "**Multi-Family**" means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

(oo) "**Non-Compostable Paper**" includes but is not limited to paper coated in a plastic material which will not breakdown in the composting process, or as otherwise defined in 14 CCR § 18982(a)(41).

(pp) [Reserved.]

(qq) [Reserved.]

(rr) "**Notice of Violation**" ("**NOV**") means any notice indicating that a violation has occurred which includes a compliance date to avoid any action to seek penalties, or as otherwise defined in 14 CCR § 18982(a)(45) or further explained in 14 CCR § 18995.4.

(ss) "**Organic Waste**" includes Greenwaste and Food Waste

(tt) "**Organic Waste Generator**" means a person or entity which is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR § 18982(a)(48).

(uu) [Reserved.]

(vv) [Reserved.]

(ww) "**Prohibited Container Contaminants**" means the following: (i) discarded materials placed in the Blue Container which are not identified as acceptable Source Separated Recyclable Materials for the City's Blue Container; (ii) discarded materials placed in the Green Container which are not identified as acceptable Source Separated Green Container Organic Waste for the City's Green Container; (iii) discarded materials placed in the Gray Container which are acceptable Source Separated Recyclable Materials and/or Source Separated Green Container Organic Wastes to be placed in the City's Green Container and/or Blue Container; and, (iv) Excluded Waste placed in any container.

(xx) [Reserved.]

(yy) "**Recovery**" means any activity or process described in 14 CCR § 18983.1(b), or as otherwise defined in 14 CCR § 18982(a)(49).

(zz) "**Recyclables**" means those materials that by way of collecting, sorting, cleansing, treating, and reconstituting materials would otherwise become solid waste, and by processing can be returned to the economic main stream in the form of raw materials for new, reused, or reconstituted products. Recyclables include, but are not limited to, newsprint, mixed paper, aluminum, plastics, glass, metal, cardboard, chip board, junk mail, magazines, newspaper, books, computer paper, and the like.

(aaa) [Reserved.]

(bbb) [Reserved.]

(ccc) "**Remote Monitoring**" means the use of the internet of things (IoT) and/or wireless electronic devices to visualize the contents of Blue Containers, Green Containers, and Gray Containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container Contaminants.

(ddd) [Reserved.]

(eee) "**Restaurant**" means an establishment primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption, or as otherwise defined in 14 CCR § 18982(a)(64).

(fff) "**Route Review**" means a visual Inspection of containers along a

Hauler Route for the purpose of determining Container Contamination, and may include mechanical Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR § 18982(a)(65).

(ggg) "**SB-1383**" means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

(hhh) "**SB-1383 Regulations**" or "**SB-1383 Regulatory**" means or refers to, for the purposes of this ordinance, the Short-Lived Climate Pollutants: Organic Waste Reduction regulations developed by CalRecycle and adopted in 2020 that created 14 CCR, Division 7, Chapter 12 and amended portions of regulations of 14 CCR and 27 CCR.

(iii) "**Self-Hauler**" means a person, who hauls Solid Waste, he or she has generated using the generator's own equipment.

(jjj) [Reserved.]

(kkk) "**Solid Waste**" has the same meaning as defined in State Public Resources Code § 40191, which defines Solid Waste as all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

(1) Hazardous waste, as defined in the State Public Resources Code Section 40141.

(2) Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the State Health and Safety Code).

(3) Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with section 117600) of Division 104 of the State Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as

defined in State Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the State Public Resources Code.

(*lll*) "**Source Separated**" and "**Source Separate**" refers to the segregation, by the generator, of materials designated for separate collection under this ordinance for required recycling, processing, recovery or reuse.

(mmm) [Reserved.]

(nnn) [Reserved.]

(ooo) [Reserved.]

(ppp) "**State**" means the State of California.

(qqq) "**Supermarket**" means a full-line, self-service retail store with gross annual sales of two million dollars ($2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items, or as otherwise defined in 14 CCR § 18982(a)(71).

(rrr) "**Tier One Commercial Edible Food Generator**" means a Commercial Edible Food Generator which is one of the following:

(1) Supermarket.
(2) Grocery Store with a total facility size equal to or greater than 10,000 square feet.
(3) Food Service Provider.
(4) Food Distributor.
(5) Wholesale Food Vendor.

If the definition in 14 CCR § 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR § 18982(a)(73) shall prevail and apply to this ordinance.

(sss) "**Tier Two Commercial Edible Food Generator**" means a Commercial Edible Food Generator which is one of the following:

(1) Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
(2) Hotel with an on-site Food Facility and 200 or more rooms.
(3) Health facility with an on-site Food Facility and 100 or more beds.

(4) Large Venue.
(5) Large Event.
(6) A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
(7) A Local Education Agency facility with an on-site Food Facility.

If the definition in 14 CCR § 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR § 18982(a)(74) shall prevail and apply to this ordinance.

(ttt) [Reserved.]

(uuu) "**Wholesale Food Vendor**" means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination, or as otherwise defined in 14 CCR § 189852(a)(76).

3.40 REQUIREMENTS FOR SINGLE-FAMILY GENERATORS

Every person owning or occupying a residence or commercial establishment must subscribe to solid waste, organic waste and segregated recyclable collection. The City shall have the right to review the number and size of a generator's containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and each Single-Family generator shall adjust its service level for its collection services as requested by the City. The requirements for Source Separating Solid Waste are as follows:

(a) All residential and commercial generators of Solid Waste are required to source separate materials into appropriate Grey, Blue and Green containers.

(b) Generators shall place Source Separated Organic Waste, including Food Waste, in the Green Container; Segregated Recyclable Materials in the Blue Container; and Gray Container Waste in the Gray Container. Generators must not place materials designated for the Gray Container into the Green Container or Blue Container.

(c) Generators must not place Prohibited Container Contaminants in any container. The City and its authorized recycling agent reserve the right to inspect containers to determine if Prohibited Container Contaminants are present and issue a warning or, with the written consent of appropriate City staff, assess penalties and fines for violation of this ordinance.

3.50 REQUIREMENTS FOR COMMERCIAL BUSINESSES

Generators which are Commercial Businesses, including Multi-Family Residential Dwellings, must:

(a) Subscribe to the City's three-container collection services. The City shall have the right to review the number and size of a generator's containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, Commercial Businesses must adjust their service level for their collection services as requested by the City.

(c) Supply and allow access to adequate number, size, and location of collection containers with sufficient labels or colors for employees, contractors, tenants and customers, consistent with the City's Blue Container, Green Container and Gray Container collection service.

(d) Excluding Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials in all indoor and outdoor areas where disposal containers are provided for customers, for materials generated by that business. Such containers do not need to be provided in restrooms. If a Commercial Business does not generate any of the materials which would be collected in one type of container, then the business does not have to provide that particular container in all areas where disposal containers are provided for customers. Pursuant to 14 CCR § 18984.9(b), the containers provided by the business must have either:

(1) A body or lid that conforms with the container colors provided through the collection service provided by the City, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. A Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, which do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.

(2) Container labels which include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted

and primary materials prohibited in the container. Pursuant 14 CCR § 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.

(e) Multi-Family Residential Dwellings are not required to comply with container placement requirements or labeling requirement pursuant to 14 CCR § 18984.9(b).

(f) To the extent practical through education, training, Inspection and/or other measures, excluding Multi-Family Residential Dwellings, prohibit employees from placing materials in a container not designated for those materials per the City's Blue Container, Green Container and Gray Container collection service.

(g) Excluding Multi-Family Residential Dwellings, periodically inspect Blue Containers, Green Containers and Gray Containers for contamination and inform employees if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR § 18984.9(b)(3).

(h) Annually provide information to employees, contractors, tenants and customers about Organic Waste Recovery requirements and about proper sorting of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials.

(i) Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep Source Separated Green Container Organic Waste and Source Separated Recyclable Materials separate from Gray Container Waste (when applicable) and the location of containers and the rules governing their use at each property.

(j) Provide or arrange access for the City or its agent to their properties during all Inspections conducted in accordance with this ordinance to confirm compliance with the requirements of this ordinance.

(k) Accommodate and cooperate with the City's Remote Monitoring program for Inspection of the contents of containers for Prohibited Container Contaminants, which may be implemented at a later date, to evaluate generator's compliance with this ordinance.

(n) Nothing in this Section prohibits a generator from preventing or reducing waste generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR § 18984.9(c).

(o) Commercial Businesses which are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements in this ordinance.

3.60 WAIVERS FOR GENERATORS

(a) De Minimus Waiver: City may waive a Commercial Business' obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste requirements of this ordinance if the Commercial Business provides documentation establishing that the business generates below a certain threshold amount of Organic Waste material as described below. Commercial Businesses requesting a de minimis waiver must:

(1) Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted in Section (a)(2) below.

(2) Provide documentation that either:

(A) The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than twenty (20) gallons per week per applicable container of the business' total waste; or,

(B) The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than ten (10) gallons per week per applicable container of the business' total waste.

(3) Notify the City if circumstances change such that Commercial Business's Organic Waste exceeds threshold required for waiver, in which case waiver will be rescinded.

(4) Provide written verification of eligibility for de minimis waiver every five (5) years, if the City has approved de minimis waiver.

(b) Physical Space Waiver: City may waive a Commercial Business' or property owner's obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements if the City has evidence

from its own staff, a hauler, licensed architect or licensed engineer demonstrating that the premises lack adequate available space for the collection containers necessary for compliance with the Organic Waste collection requirements of this ordinance. A Commercial Business or property owner may request a physical space waiver through the following process:

(1) Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver.

(2) Provide documentation that the premises lacks adequate space for Blue Containers and/or Green Containers including documentation from its hauler, licensed architect, or licensed engineer.

(3) Every five (5) years after the City has approved application for a physical space waiver, provide written verification to the City that it is still eligible for physical space waiver.

3.70 REQUIREMENTS FOR COMMERCIAL EDIBLE FOOD GENERATORS

(a) Tier One Commercial Edible Food Generators must comply with the requirements of this Section 3.70 commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR § 18991.3.

(b) Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.

(c) Commercial Edible Food Generators must comply with the following requirements:

(1) Arrange to recover the maximum amount of Edible Food which would otherwise be disposed.

(2) Contract with, or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection of Edible Food for Food Recovery; or, (ii) acceptance of the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.

(3) Do not intentionally spoil or allow to be spoiled Edible Food which is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.

(4) Allow the City's designated enforcement entity or designated third party enforcement entity to access the premises and review records pursuant to 14 CCR § 18991.4.

(5) Keep records which include all of the following information, or as otherwise specified in 14 CCR § 18991.4:

(A) A list of each Food Recovery Service or organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR § 18991.3(b).

(B) A copy of all contracts or written agreements established under 14 CCR § 18991.3(b).

(C) A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:

(i) The name, address and contact information of the Food Recovery Service or Food Recovery Organization.

(ii) The types of food which will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.

(iii) The established frequency that food will be collected or self-hauled.

(iv) The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.

(d) Nothing in this ordinance shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with section 49580] to Chapter 9 of Part 27

of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

3.80 SELF-HAULER REQUIREMENTS

(a) Self-Haulers shall source separate all recyclable materials and Organic Waste (materials which the City otherwise requires generators to separate for collection in the City's organics and recycling collection program) generated on-site from Solid Waste in a manner consistent with 14 CCR §§ 18984.1 and 18984.2.

(c) Self-Haulers which are Commercial Businesses (including Multi-Family Residential Dwellings) must keep a record of the amount of Solid Waste delivered to each Solid Waste facility, operation, activity or property that processes or recovers Organic Waste; this record shall be subject to Inspection by the City. The records must include all of the following information:

(1) Delivery receipts and weight tickets from the entity accepting the waste.

(2) The amount of material in cubic yards or tons transported by the generator to each entity.

(3) If the material is transported to an entity which does not have scales on-site or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but must keep a record of the entities that received the Organic Waste.

(d) Self-Haulers who are Commercial Businesses (including Multi-Family Self-Haulers) must provide information collected in Section 3.80(c) to the City if requested.

(e) A residential Organic Waste Generator which self-hauls Organic Waste is not required to record or report information in Section 3.80(c) and (d).

3.90 INSPECTIONS AND INVESTIGATIONS

(a) The City's representatives and/or its designated entity, including Designees are authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from

generators, or Source Separated materials to confirm compliance with this ordinance by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow the City to enter the interior of a private residential property for Inspection without consent or court order under Civil Code §§ 1822.50 *et seq*.

(b) Regulated entity must provide or arrange for access during all Inspections (with the exception of residential property interiors) and must cooperate with the City or its designated entity/Designee during such Inspections and investigations. Such Inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this ordinance described herein. Failure to provide or arrange for: (i) access to an entity's premises; (ii) installation and operation of Remote Monitoring equipment (optional); or (ii) access to records for any Inspection or investigation is a violation of this ordinance and may result in penalties.

(c) Any records obtained by the City during its Inspections, Remote Monitoring and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code §§ 6250 et seq. or successor statutes.

(d) The City's representatives, its designated entity and/or Designee are authorized to conduct any Inspections, Remote Monitoring, or other investigations as reasonably necessary to further the goals of this ordinance, subject to applicable laws.

(e) The City shall receive written complaints from persons regarding an entity which may potentially be in non-compliance with this ordinance, SB-1383 and its implementing regulations, including receipt of anonymous complaints.

3.100 ENFORCEMENT

(a) Each and all violations of this ordinance by any person, business, building or premises, other than those of the City and its employees, officers, and agents in their official capacity, shall constitute a separate public nuisance and violation of this ordinance which shall constitute an infraction.

(b) No person shall obstruct, impede and/or otherwise interfere with any

employee, officer or agent of the City who is engaged in any form of enforcement of any provision of this ordinance.

(c) The owner of any business, building or premises in violation of any provision of this ordinance is guilty of an infraction and a public nuisance.

(d) Unless otherwise expressly prohibited, each violation of this ordinance may be enforced by each and all lawful remedies available under the Chapter 2 of Title 1 of the Avenal Municipal Code and applicable State statute(s) and implementing regulations, including but not limited to civil fines and penalties, infraction citation, public nuisance abatement and civil injunction, as appropriate, and all available remedies shall be cumulative and not preclude other available remedies. Violation of this ordinance shall not constitute a misdemeanor.

Notice of Violation shall also be sent to "owner" at the official address of the owner maintained by the tax collector for the City or if no such address is available, to the owner at the address of the dwelling or Commercial property and/or to the party responsible for paying for the collection services, depending upon available information.

(e) [Reserved.]

(f) [Reserved.]

(g) Compliance Deadline Extension Considerations

The City may extend any compliance deadlines set forth in a Notice of Violation issued for a violation of this ordinance if it finds that there are extenuating circumstances beyond the control of the violator which make compliance within the deadlines impracticable, including the following:

(1) Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;

(2) Delays in obtaining discretionary permits or other government agency approvals; or,

(3) Deficiencies in Organic Waste recycling infrastructure or Edible Food Recovery capacity and the City is under a corrective action plan with CalRecycle pursuant to 14 CCR § 18996.2 due to those deficiencies.

(h) Appeals Process

The procedure for all appeals from a civil penalty assessed as a result of a

violation of this ordinance shall be governed by Chapter 4 of Title 1 of the Avenal Municipal Code, except that any longer periods expressly prescribed within this ordinance (or otherwise controlling constitutional provisions, statutes and their implementing regulations) shall govern over any conflicting period prescribed within Chapter 4 of Title 1.

(i) Education Period for Non-Compliance
Beginning January 1, 2022 and through December 31, 2023, the City will conduct Inspections, Remote Monitoring, Route Reviews or waste evaluations, and Compliance Reviews, depending upon the type of regulated entity, to determine compliance, and if the City determines that Organic Waste Generator, Self-Hauler, hauler, Tier One Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this ordinance and a notice that compliance is required by January 1, 2022, and that violations may be subject to administrative civil penalties starting on January 1, 2024.

Section 4. CEQA REVIEW. The City Council hereby finds that this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) [the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment] and 15061(b)(3) [there is no possibility the activity in question may have a significant effect on the environment]. In addition to the foregoing general exemptions, the City Council further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 categorical exemption [regulatory activity to assure the protection of the environment]. The City Manager is hereby authorized and directed to ensure that a *Notice of Exemption* is filed pursuant to CEQA Guidelines section 15062 [14 C.C.R. § 15062].

Section 5. NO LIABILITY. The provisions of this ordinance shall not in any way be construed as imposing any duty of care, liability, or responsibility for damage to person or property upon the City of Avenal, or any official, employee or agent thereof.

Section 6. PENDING ACTIONS. Nothing in this ordinance or in the codes hereby adopted shall be construed to affect any suit or proceeding pending or impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance or code repealed by this ordinance,

nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 7. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Avenal hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 8. CONSTRUCTION. The City Council intends this ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this ordinance shall be construed in light of that intent. To the extent the provisions of the Avenal Municipal Code as amended by this ordinance are substantially the same as provisions in the Avenal Municipal Code existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 9. URGENCY; EFFECTIVE DATE; AND PUBLICATION. This ordinance is adopted by the City Council pursuant to the California Constitution, article XI, section 7 and Government Code section 36937(b) by a four-fifths (4/5) or greater vote, as an urgency measure to protect the public health, safety, welfare and peace, and shall take effect immediately. The reasons for such urgency are set forth in Section 1 above, the adopting resolution and/or the Council meeting record. Prior to the expiration of fifteen (15) days from the passage hereof a certified copy of this full ordinance shall be posted in the office of the City Clerk pursuant to Government Code section 36933(a) and in three public locations within the City of Avenal, State of California, together with the names of the Council members voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the City Council of the City of Avenal, State of California, on **JANUARY 13, 2022** at a regular meeting of said Council duly and regularly convened on said day by the following vote:

AYES: **RAMIREZ, HERNANDEZ, VERDUGO, PRECIADO.**
NOES: **NONE.**
ABSTAIN: **NONE.**
ABSENT: **GRAVELLE.**

ALVARO PRECIADO, Mayor
CITY OF AVENAL

ATTEST:
GRISELDA PRICE ACTING CITY CLERK
CITY OF AVENAL